

Congress of the United States
Washington, DC 20515

September 24, 2008

The Honorable Michael O. Leavitt
Secretary
Department of Health and Human Services
200 Independence Avenue, SW.
Washington, DC 20201

Dear Secretary Leavitt:

We are writing to comment on 45 CFR Part 88, proposed by the Department of Health and Human Services (HHS) on August 26, 2008. We oppose the proposed rulemaking which would impose new regulations over health care providers covered by the Church Amendments, the Public Health Service (PHS) Act § 245, and the Weldon Amendment, all of which allow providers to refuse to provide abortion services based on moral or religious objections. The proposed rule goes beyond Congressional intent in these underlying statutes and could jeopardize women's access to needed healthcare services, including contraception.

We respect federal laws that prohibit discrimination on the basis of moral or religious opposition to abortion, many of which have been settled law for more than thirty years. However, this proposed rule has far-reaching implications that threaten existing protections for women's access to health care, information and voluntary family planning services.

Specifically, we oppose the overly broad jurisdiction these regulations assert over the health care and family planning providers. The regulations affect "any activity with a reasonable connection to a procedure, health service or health service program, or research activity... This includes counseling, referral, training, and other arrangements for the procedure, health service, or research activity." This definition would expand federal law beyond Congress's original intent, and could even permit health care providers to refuse to provide contraceptives. It could also undermine a woman's right to receive accurate and complete medical information.

In addition, we are troubled that the regulations could dismantle laws that states enacted to protect access to family planning services. These include state laws that: require employers to include coverage of contraceptives in any drug benefit package; require hospitals to offer emergency contraception to rape victims; and require pharmacies to fill prescriptions even if individual pharmacists working there have a moral objection. The proposed regulations would limit a government's ability to enforce laws that have been settled for years.

We are also concerned about the impact that these regulations could have on the federal Medicaid program and the Title X family planning program. As you know, Medicaid provides a mandatory contraception benefit for its patients, and Title X grantees are required to cover a broad range of family planning services, including non-directive pregnancy counseling for low-income women. The proposed rule creates a potential conflict with these existing laws and could allow healthcare providers to deny patients these services outright.

Finally, we are troubled that by HHS's own assessment, this regulation could cost the health care community nearly \$45 million and affect 600,000 workers. It seems highly imprudent to impose further costs on a sector struggling to meet current obligations to patients.

We urge the Department to consider these concerns and not change this well-established law.

Sincerely,



Mark Kirk
Member of Congress



Christopher Shays
Member of Congress



Michael Castle
Member of Congress



Judy Biggert
Member of Congress



Charlie Dent
Member of Congress